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No. 87-1026

In the Supreme Court of the United States

OCTOBER TERM, 1987

RAYMOND STOKES,
Petitioner,

vs.

THE UNIVERSITY OF TENNESSEE AT MARTIN,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE TENNESSEE SUPREME COURT

BRIEF IN OPPOSITION

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RESTATEMENT OF THE QUESTION PRESENTED FOR REVIEW

Did the Tennessee Court of Appeals for the Western Section Correctly Hold Petitioner's 42 U.S.C. § 1983 Action to Be Barred by the Doctriine of Sovereign Immunity and Did the Tennessee Supreme Court Correctly Deny Petitioner's Application for Permission to Appeal From That Judgment?

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BRIEF IN OPPOSITION

RESTATEMENT OF THE CASE

On May 18, 1984, petitioner filed a complaint in the Weakley County, Tennessee Chancery Court against respondent, The University of Tennessee at Martin[1] ("University") challenging the University's decision to terminate his employment and seeking reinstatement, benefits, back pay and attorney fees. The circumstances surrounding the termination are unimportant for purposes of this appeal. The complaint, as later amended, alleged

1. The University of Tennessee at Martin is a branch of The University of Tennessee, Tennessee Code Annotated § 49-9-1001, which is in turn an agency of the State of Tennessee. *Jain v. University of Tennessee at Martin*, 670 F. Supp. 1388 (W.D. Tenn. 1987); *Firemen's Fund Ins. v. Bell Helicopter Textron*, 667 F. Supp. 583, 584 (E.D. Tenn. 1987); *Carlson v. Highter*, 612 F. Supp. 603, 604, 605 (E.D. Tenn. 1985).

a violation of petitioner's due process right under the Fourteenth Amendment to the United States Constitution and a cause of action under 42 U.S.C. § 1983.

The University subsequently filed a motion for summary judgment which asserted, in part, that petitioner's action was barred by the doctrine of sovereign immunity, Tennessee Code Annotated § 20-13-102.[2] On October 20, 1986, the Chancery Court granted the University's motion, finding, inter alia, that petitioner's action was indeed barred by the doctrine of sovereign immunity.

Following petitioner's appeal of the trial court's order, the Court of Appeals for the Western Section of Tennessee affirmed the judgment of the trial court on the ground that petitioner's action was barred by the doctrine of sovereign immunity. *Stokes v. The University of Tenn. at Martin*, 737 S.W. 2d 545 (Tenn. App. 1987).

Subsequently, petitioner applied to the Tennessee Supreme Court for permission to appeal the judgment of the Court of Appeals. That application was denied by order of the Tennessee Supreme Court on September 8, 1987.

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2. Tennessee Code Annotated § 20-13-102 provides:

Actions against state prohibited.

(a) No court in the state shall have any power, jurisdiction, or authority to entertain any suit against the state, or against any officer of the state acting by authority of the state, with a view to reach the state, its treasury, funds, or property, and all such suits shall be dismissed as to the state or such officers, on motion, plea, or demurrer of the law officer of the state, or counsel employed for the state.

(b) No statutory or other provision authorizing the University of Tennessee and its board of trustees to sue and be sued shall constitute a waiver of sovereign immunity.

Petitioner now appeals the order of the Tennessee Supreme Court, claiming that "[I]f the decisions of the courts below are allowed to stand, petitioner could never have a forum to protect his constitutional rights." [*Petition for Writ of Certiorari* at p. 6.]

ARGUMENT

The Tennessee Court of Appeals for the Western Section Correctly Held Petitioner's 42 U.S.C. § 1983 Action to Be Barred by the Doctrine of Sovereign Immunity and the Tennessee Supreme Court Correctly Denied Petitioner's Application for Permission to Appeal From That Judgment

It should be observed that petitioner does not contest the University's status as an agency of the State of Tennessee which, as an arm or alter ego of the state, possesses the state's sovereign immunity. See *Mt. Healthy City School District Board of Education v. Doyle*, 429 U.S. 274, 280 (1977). Likewise, petitioner does not contend that the courts below erroneously applied existing state law to the case at bar. Quite to the contrary, petitioner acknowledges that Article 1, Section 17 of the Tennessee Constitution permits suits against the State of Tennessee only as the legislature may direct, that Tennessee Code Annotated § 20-13-102 expressly prohibits lawsuits against the University and that, as a result, Tennessee law prohibits petitioner from suing the state. [*Petition for Writ of Certiorari* at pp. 6-7.][3] In essence,

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3. Petitioner also contends that the University violated provisions of its Personnel Policies and Procedures Manual which set forth employee rights to which he was entitled. However, this issue was not addressed by the Tennessee appellate courts and has no bearing on the resolution of the sovereign immunity issue.

petitioner asks this court to abolish the doctrine of sovereign immunity in order that he might pursue his constitutional claims directly against the University. The premise on which petitioner's prayer for relief rests is completely erroneous.

At the outset, it should be noted that the doctrine of state sovereign immunity is one which has been long recognized and fully accepted by this court. See *Green v. Mansour,* ..... U.S. ....., 106 S. Ct. 423, 425 (1985); *Atascadero State Hospital v. Scanlon,* ..... U.S. ....., 105 S. Ct. 3142, 3145 (1985); *Pennhurst State School & Hospital v. Halderman,* 465 U.S. 89, 98 (1984); *Quern v. Jordan,* 440 U.S. 332, 342-45 (1979). In *Atascadero,* the court reiterated that it is the fundamental principle of sovereign immunity that limits the grant of judicial authority to the federal courts and listed numerous cases wherein this court has upheld the sovereignty of the state and its immunity from suit. 105 S. Ct. at 3148 n. 3.

Petitioner seeks to circumvent the jurisdictional bar imposed by the Tennessee state courts' adherence to the doctrine of sovereign immunity by seeking relief from this court. However, such attempt to secure through the federal courts that which petitioner is barred from obtaining through the Tennessee state courts succumbs to the clear constraint imposed on the federal courts by the Eleventh Amendment to the United States Constitution:

> The judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against the United States by citizens of another state or by citizens or subjects of any foreign state.

This court has consistently held that an unconsenting state is immune from suits brought in the federal courts by her own citizens as well as by citizens of another state. *Edelman v. Jordan,* 415 U.S. 651, 662-63 (1974). See also *Atascadero State Hospital,* 105 S. Ct. at 3145, 3147-48; *Pennhurst School & Hospital,* 465 U.S. at 98-99; *Cory v. White,* 457 U.S. 85 (1982); *Quern v. Jordan,* 440 U.S. 332, 337 (1978); *Alabama v. Pugh,* 438 U.S. 781, 782 (1978). The court has specifically held Eleventh Amendment immunity to apply to constitutional claims brought against the state pursuant to 42 U.S.C. § 1983. For example, see *Quern,* 440 U.S. at 339-40; *Pugh, supra; Edelman, supra.*

The State of Tennessee has not consented to be sued under the Fourteenth Amendment or 42 U.S.C. § 1983 in either the state or federal courts, but, instead, has expressly stated its will that no court in the state has authority to entertain suits against the State of Tennessee. Tennessee Code Annotated § 20-13-102. Such bar is expressly extended to suits against The University of Tennessee. *Id.* No exception whatever is made for suits alleging constitutional violations or suits brought pursuant to 42 U.S.C. § 1983.

Petitioner offers no authority whatever for the proposition that sovereign immunity or Eleventh Amendment immunity does not or should not apply in a case where a complainant pursues an action alleging deprivation of constitutional rights including those guaranteed by the Fourteenth Amendment. Nothing more is offered than petitioner's bare assertion that, should this court affirm the sovereignty of the State of Tennessee, petitioner will never have a forum in which to protect his constitutional

rights. Not only does petitioner fail to cite any authority in support of his conclusion, but the conclusion flies directly in the face of abundant authority to the contrary. For example, this court has long and consistently held that state officials who violate clearly established constitutional rights are not immune from suit for damages or other relief. For example, See *Anderson v. Creighton,* ..... U.S. ....., 107 S. Ct. 3034, 3038 (1987); *Green,* 106 S. Ct. at 426; *Mitchell v. Forsyth,* 472 U.S. 511, 528 (1985); *Davis v. Scherer,* 468 U.S. 183, 191 (1984); *Edelman,* 415 U.S. at 676-77; *Greenwood v. Peacock,* 384 U.S. 808, 829-30 (1966). State officials have specifically been held subject to prospective injunctive relief. For example, *Green,* 106 S. Ct. at 426; *Quern,* 440 U.S. at 339; *Edelman,* 415 U.S. at 677.

In a nutshell, at the time petitioner commenced this action he had the right to proceed in an action seeking damages or other relief against any University official shown to have violated petitioner's clearly established constitutional rights, but he failed to do so. Petitioner's failure to pursue an available remedy does not warrant reversal of this court's longstanding support of the doctrine of sovereign and Eleventh Amendment immunity.

CONCLUSION

For the foregoing reasons, petitioner's petition for writ of certiorari should be denied.

Respectfully submitted,

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